

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION**

IN RE:)	CASE NO. 14-00231-5-RDD
)	
SHELIA M. SMITH)	
)	
SSN: XXX-XX-9171)	CHAPTER 13
)	
DEBTOR.)	

**MOTION TO SET ASIDE SALE, VEST PROPERTY IN HEIRS SUBJECT TO
DEED OF TRUST AND FOR OTHER RELIEF**

The Bank of New York Mellon as Trustee for CIT Home Equity Loan Trust 2003-1 (hereinafter "Movant"), seeking relief herein, moves the Court and respectfully shows as follows:

PARTIES AND JURISDICTION

1. Movant is the Trustee under the Home Equity Loan Trust referenced above with an office location in Oklahoma City, Oklahoma.
2. The Debtor is a citizen and resident of Lenoir County, North Carolina.
3. The Court has jurisdiction over this proceeding, pursuant to 28 U.S.C. Section 1334, and the "Referral Order" entered herein by the Chief United States District Court Judge for the Eastern District of North Carolina. The Court also has jurisdiction over this proceeding, pursuant to 28 U.S.C. Sections 151 and 157(b) in that it is a "core proceeding."

ALLEGATIONS

4. On or about August 30, 2002, Frederica Smith and Willie R. Smith, mother and daughter, executed and delivered to the CIT Group/Consumer Finance, Inc. a certain Note in the principal sum of \$56,800.00. A true copy of said Note is appended hereto, identified as "**Exhibit 1**," the same is incorporated herein by reference.
5. Also on that date, Frederica Smith and Willie R. Smith, mother and daughter, executed and delivered to Craig A. Williamson as Trustee, a Deed of Trust which encumbered the real property as described there; to wit, 3096 Poole Road, Kinston, Lenoir County, North Carolina (hereinafter "real property"). The Deed of Trust was filed on September 5, 2002, and

recorded in Book 1282 at Page 547 of the Lenoir County Public Registry. A true copy of said Deed of Trust is appended hereto, identified as "**Exhibit 2**," the same is incorporated herein by reference.

6. At the time of the execution of the Note and Deed of Trust, the real property was owned by Frederica Smith and Willie R. Smith, as joint tenants with rights of survivorship.
7. On October 15, 2010, Frederica Smith died and Willie Ruth Smith, as the surviving joint tenant, acquired title to the real property in fee simple.
8. Based on the default on the terms of the Note, a foreclosure proceeding was instituted to foreclose on the real property, case #12-SP-6. Willie Ruth Smith was properly served with a copy of the Notice of Hearing before the Clerk.
9. Thereafter, Willie R. Smith filed a Chapter 13 bankruptcy proceeding before the Clerk of the Bankruptcy Court for the Eastern District of North Carolina, case #12-02240. This case was subsequently dismissed by Order of the Court on July 2, 2013.
10. Willie R. Smith died on October 2, 2012.
11. Upon information and belief, the Debtor died intestate. An Estate file was not opened.
12. At the time of the death of Willie Ruth Smith and upon information and belief, Willie Ruth Smith had twelve (12) children who potentially acquired an interest in the real property as a result of the intestacy laws of this State. Upon information and belief, at the time of Willie Ruth Smith's death, the Debtor acquired a one-twelfth interest in the real property.
13. On January 13, 2014, Debtor filed a petition under Chapter 13 of Title 11 of the United States Code.
14. On March 5, 2014, the real property was under the Deed of Trust referenced hereinabove was sold by the Substitute Trustee and a Deed was executed by the Substitute Trustee transferring the real property to Movant. A true copy of said Trustee's Deed is appended hereto, identified as "**Exhibit 3**," the same is incorporated herein by reference.
15. The sale of the real property and the execution and filing of the Trustee's Deed is void pursuant to 11 U.S.C. § 549.
16. Upon information and belief, on or about December 5, 2014, Sheila Smith surrendered Willie Ruth Smith's last will and testament to the probate

court of Lenoir County. Upon further information and belief, Smith's last will and testament vested title to the real property in fee simple in Sheila Smith.

17. Based on the forgoing, the Trustee is entitled to an Order from the Court voiding the sale, vesting title to the real property in the name of the heirs and specifically, Sheila Smith, declaring that the Deed of Trust remains valid, and enforceable in accordance with its terms and for such other and further relief the Court deems just and proper.

WHEREFORE, The Bank of New York Mellon as Trustee for CIT Home Equity Loan Trust 2003-1 prays the Court as follows:

1. That the Court enter an Order voiding the actions subsequent to the petition date as set forth herein pursuant to 11 U.S.C. § 549;
2. That the Court vest title to the real property in the name of Sheila Smith;
3. That the Court entering an Order declaring that the Deed of Trust referenced herein and recorded in Book 1282 at Page 547 remains valid and enforceable in accordance with its terms effective the date of recording of the same;
4. That the Court order that a copy of this Order be recorded with the Register of Deeds of Lenoir County to provide notice to all potential parties of this proceeding and the validity of the Deed of Trust;
5. For such other and further relief as to the Court may deem just and proper.

This, the 7th day of January 2015.

HUTCHENS LAW FIRM

BY: /s/: Joseph J. Vonnegut
JOSEPH J. VONNEGUT
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Mellon as Trustee for CIT Home Equity
Loan Trust 2003-1
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State Bar No.: 32974

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NOTICE OF OPPORTUNITY FOR HEARING

TAKE NOTICE that an application or motion has been filed by The Bank of New York Mellon as Trustee for CIT Home Equity Loan Trust 2003-1. A copy of the application or motion accompanies this Notice.

TAKE FURTHER NOTICE that any response, including objection, to the relief requested in the attached application or motion, should be filed with the Clerk of the Bankruptcy Court within fourteen (14) days of the date of this Notice and a copy served on the attorney identified below and upon other parties as required by law or court order. Any response shall clearly identify the specific motion or application to which the response is directed.

TAKE FURTHER NOTICE that if a response and a request for a hearing is filed by the Debtor, Trustee, or other parties in interest named herein in writing within the time indicated, a hearing will be conducted on the Motion and response thereto at a date, time and place to be later set by this Court and all interested parties will be notified accordingly. If no request for a hearing is timely filed, the Court may rule on the Motion and response thereto ex parte without further notice.

This, the 7th day of January 2015.

HUTCHENS LAW FIRM

BY: /s/: Joseph J. Vonnegut
JOSEPH J. VONNEGUT
Attorneys for The Bank of New York
Mellon as Trustee for CIT Home Equity
Loan Trust 2003-1
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date this MOTION TO SET ASIDE SALE, VEST PROPERTY IN HEIRS SUBJECT TO DEED OF TRUST AND FOR OTHER RELIEF and NOTICE OF OPPORTUNITY FOR HEARING were served upon the following parties by depositing a copy enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Parcel Service or via the appropriate electronic server.

Pro Se Debtor:

Shelia Smith
814 Dewey Street
Kinston, NC 28501

Chapter 13 Trustee:

Joseph A. Bledsoe, III
PO Box 1618
New Bern, NC 28563

This, the 7th day of January 2015.

HUTCHENS LAW FIRM

BY: /s/: Joseph J. Vonnegut
JOSEPH J. VONNEGUT
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Mellon as Trustee for CIT Home Equity
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